

**UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK**

MICROSOFT CORPORATION,

Plaintiff,

v.

DATATERN, INC.,

Defendant.

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Civil Action No. 11-cv-2365-RJH

ANSWER

JURY TRIAL DEMANDED

The defendant, DataTern, Inc. (“DataTern”), by and through its attorneys, answers the numbered paragraphs of the complaint as follows:

1. The allegations of Paragraph 1 merely states the nature of the case and thus no specific answer is needed. To the extent an answer is required, however, DataTern denies the allegations of Paragraph 1.

2. Admitted.

3. DataTern admits that it is a Texas corporation and otherwise denies the allegations of Paragraph 3.

4. Paragraph 4 states a legal conclusion to which no answer is required. To the extent an answer is required, however, DataTern denies the allegations of Paragraph 4.

5. Paragraph 5 states a legal conclusion to which no answer is required. To the extent an answer is required, however, DataTern denies the allegations of Paragraph 5.

6. Paragraph 5 states a legal conclusion to which no answer is required. To the extent an answer is required, however, DataTern denies the allegations of Paragraph 5.

7. Admitted.

8. Admitted

9. Admitted.

10. DataTern admits that that the quoted statements were made and otherwise denies the allegations in Paragraph 10.

11. Admitted.

12. Admitted

13. Admitted.

14. Admitted.

15. Admitted.

16. Admitted.

17. Admitted.

18. Denied.

19. DataTern lacks sufficient information or belief as to whether any alleged individual payments have been “far below each such defendant’s anticipated individual litigation cost to defend itself,” as alleged, and otherwise denies the allegations of Paragraph 19.

20. Denied.

21. DataTern admits that Amphion made the quoted statements but otherwise denies the allegations of Paragraph 21.

22. DataTern admits that it has communicated with BP America Inc. and that, in accordance with applicable procedural and discovery rules and orders in the underlying litigation against BP America, DataTern has served on BP America claim charts showing infringement by BP America’s accused instrumentalities.

23. DataTern lacks sufficient information or belief to admit or deny the allegations in Paragraph 23.

24. DataTern admits that it has contacted from time to time defendants in the various litigations currently pending in Texas and has delivered to such defendants claim charts showing infringement of the '402 and/or '502 patents but otherwise denies the allegations of Paragraph 24.

25. DataTern lacks sufficient information or belief to admit or deny the allegations in Paragraph 25.

26. DataTern admits that it has communicated with J.C. Penney and that, in accordance with applicable procedural and discovery rules and orders in the underlying litigation against J.C. Penney, DataTern has served on J.C. Penney claim charts showing infringement by J.C. Penney's accused instrumentalities.

27. DataTern lacks sufficient information or belief to admit or deny the allegations in Paragraph 25.

28. DataTern lacks sufficient information or belief as to Microsoft's beliefs but denies that the '402 and '502 patents are invalid. DataTern denies the remaining allegations of Paragraph 28.

29. Denied.

30. DataTern realleges and incorporates its answers to Paragraphs 1-29.

31. Paragraph 31 states legal conclusions to which no answer is required. To the extent an answer is required, however, DataTern denies the allegations of Paragraph 31.

32. Paragraph 32 states legal conclusions to which no answer is required. To the extent an answer is required, however, DataTern lacks sufficient information or belief as to the identity of the prior art, if any, to which Microsoft refers and otherwise denies the allegations of Paragraph 32.

33. DataTern admits that Microsoft is seeking a declaratory judgment. The remaining allegations of Paragraph 33 state a legal conclusion to which no answer is required. To the extent an answer is required, however, DataTern denies the allegations of Paragraph 33.

34. DataTern realleges and incorporates its answers to Paragraphs 1-29.

35. Paragraph 35 states legal conclusions to which no answer is required. To the extent an answer is required, however, DataTern denies the allegations of Paragraph 35.

36. Paragraph 36 states legal conclusions to which no answer is required. To the extent an answer is required, however, DataTern lacks sufficient information or belief as to the identity of the prior art, if any, to which Microsoft refers and otherwise denies the allegations of Paragraph 36.

37. DataTern admits that Microsoft is seeking a declaratory judgment. The remaining allegations of Paragraph 37 state a legal conclusion to which no answer is required. To the extent an answer is required, however, DataTern denies the allegations of Paragraph 37.

38. DataTern realleges and incorporates its answers to Paragraphs 1-29.

39. Paragraph 39 states legal conclusions to which no answer is required. To the extent an answer is required, however, DataTern denies the allegations of Paragraph 39.

40. DataTern admits that Microsoft is seeking a declaratory judgment. The remaining allegations of Paragraph 40 state a legal conclusion to which no answer is required. To the extent an answer is required, however, DataTern denies the allegations of Paragraph 40.

41. DataTern realleges and incorporates its answers to Paragraphs 1-29.

42. Paragraph 42 states legal conclusions to which no answer is required. To the extent an answer is required, however, DataTern denies the allegations of Paragraph 42.

43. DataTern admits that Microsoft is seeking a declaratory judgment. The remaining allegations of Paragraph 43 state a legal conclusion to which no answer is required. To the extent an answer is required, however, DataTern denies the allegations of Paragraph 43.

AFFIRMATIVE DEFENSES

1. Microsoft has failed to state a proper claim for relief.
2. Microsoft has failed to allege a sufficient case or controversy and thus this Court lacks subject matter jurisdiction over the declaratory judgment claims.
3. This Court lacks personal jurisdiction over DataTern, and venue is improper.
4. Microsoft's claims are barred under the equitable doctrines of laches, estoppel, and unclean hands.
5. The '402 and '502 patents are presumed to be, and are, valid.
6. DataTern reserves its rights to assert additional claims or defenses as appropriate.

JURY DEMAND

DataTern demands a trial by jury on all issues so triable.

Dated: June 3, 2011

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